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DIAMOND MCCARTHY LLP

909 Fannin, Suite 1500
Houston, Texas 77010
Telephone (713) 333-5100
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800
Email: adiamond@diamondmccarthy.com
Eric D. Madden, TX State Bar No. 24013079
Email: emadden@diamondmccarthy.com

Special Litigation Counsel for USACM Liquidating Trust

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Telephone (702) 949-8320
Facsimile (702) 949-8321

Rob Charles, NV State Bar No. 006593
Email: rcharles@rlaw.com

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegle

**NOTICE OF MOTION FOR
APPROVAL OF SETTLEMENT
PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

Hearing Date: October 19, 2009
Hearing Time: 3:00 p.m.

NOTICE IS HEREBY GIVEN that a Motion for Approval of Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion" was filed on August 20, 2009 by the USACM Liquidating Trust [Dkt. No. 7372]. The Motion seeks entry of an order approving the proposed settlement between the USACM

Liquidating Trust (the "USACM Trust") and Amesburyport Corporation ("Amesburyport").

Following extensive arms-length negotiations, the USACM Trust and Amesburyport (collectively, the "Parties") reached a tentative agreement to resolve the Pending Litigation subject to execution of a mutually-agreeable settlement agreement.

Exhibit A, ¶ 5. The material terms of the Proposed Settlement Agreement are summarized as follows¹:

- a. **Amesburyport.** Amesburyport shall execute a Stipulated Judgment to be entered by the Court in favor of the USACM Trust for liability on the Judgment in the aggregate sum of \$2,832,832.26.
- b. **USACM Trust.** Upon entry of an order approving the Proposed Settlement Agreement by the Court and entry of the approved judgment, the USACM Trust shall dismiss its claims against Amesburyport in the Pending Litigation, with prejudice.
- c. **Release of Claims by the USACM Trust.** Except as set forth in the Proposed Settlement Agreement, the USACM Trust, on behalf of itself, its predecessors, affiliates, successors and assigns, will release and discharge Amesburyport, the Estate of William H. Sullivan, Tracey E. Belden, Eric W. Sullivan, and their executors, administrators and personal representatives (collectively, the "Released Parties") from any and all claims, demands, liabilities, obligations, damages, payments, fees, losses, and expenses, known or unknown, asserted or unasserted, of whatever nature, now existing or hereafter arising or in any way related to the Transfers alleged in the Original Complaint in the Adversary Proceeding, Adversary No. 08-01127-LBR.
- d. **Release of Claims by Released Parties as to USACM.** Except as set forth in the Proposed Settlement Agreement, the Released Parties, on behalf of themselves, their predecessors, affiliates, successors and assigns, hereby release and discharges the USACM Trust, its Trustee, and all agents, professionals, and counsel from any and all claims, demands, liabilities, obligations, damages, payments, fees, losses, and expenses, known or unknown, asserted

¹ The following is solely a summary of the terms of the Proposed Settlement, and is not intended to amend or modify the actual terms of the written settlement agreement, which terms shall control in the event of any conflicts.

1 or unasserted, of whatever nature, now existing or hereafter arising
2 or in any way related to the transfers alleged in the Original
3 Complaint in the Adversary Proceeding, Adversary No. 08-01127-
4 LBR.

5 **NOTICE IS FURTHER GIVEN** that if you do not want the Court to grant the
6 relief sought in the Motion, or if you want the Court to consider your views on the
7 Motion, then you must file an opposition with the Court, and serve a copy on the person
8 making the Motion ***no later than 15 days*** after the date of this Notice. If the hearing date
9 has been set on less than 15 days' notice, then the opposition must be filed and served ***no***
10 ***later than 5 business days*** before the hearing. The opposition must state your position,
11 set forth all relevant facts and legal authority, and be supported by affidavits or
12 declarations that conform to Local Rule 9014(c).

13 If you object to the relief requested in the Motion, you ***must*** file a **WRITTEN**
14 response to the Motion with the Court. You ***must*** also serve your written response on the
15 person who sent you this notice.

16 If you do not file a written response with the Court, or if you do not serve your
17 written response on the person who sent you this notice, then:

- 18
- 19 • The Court may *refuse to allow you to speak* at the scheduled hearing; and
 - 20 • The Court may *rule against you* without formally calling the matter at the
21 hearing.

22 **NOTICE IS FURTHER GIVEN** that the hearing on the said Motion will be
23 held before the Honorable Linda B. Riegler, United States Bankruptcy Judge, in the Foley
24 Federal Building, 300 Las Vegas Boulevard South, Third Floor, Bankruptcy Courtroom
25 No. 1, Las Vegas, Nevada 89101 on **Monday, October 19, 2009 at 3:00 p.m.**
26
27

1 Dated: August 20, 2009

2 **DIAMOND MCCARTHY LLP**

LEWIS AND ROCA LLP

3 By: /s/ J. Maxwell Beatty
Allan B. Diamond, TX 05801800 (pro hac vice)
4 Eric D. Madden, TX 24013079 (pro hac vice)
Stephen T. Loden, TX 24002489 (pro hac vice)
5 J. Maxwell Beatty, TX 24051740 (pro hac vice)
909 Fannin, Suite 1500
6 Houston, Texas 77010
(713) 333-5100 (telephone)
7 (713) 333-5199 (facsimile)

By: /s/ Rob Charles
Rob Charles, NV 6593
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8320 (telephone)
(702) 949-8321 (facsimile)

8 *Special Litigation Counsel for*
9 *USACM Liquidating Trust*

Counsel for USACM Liquidating Trust

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of DIAMOND MCCARTHY LLP and that on the 20th day of August 2009, I caused to be served a true and correct copy of the **NOTICE OF MOTION FOR APPROVAL OF SETTLEMENT PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE** (1) by electronic transmission to all parties on the Post-Effective Date Service List Dated 03/31/09 and (2) by United States mail on the 21st day of August 2009, to counsel for the Defendant, Richard Dowd, Esq., 108 Warren Road, Framingham, MA 01702.

/s/ Catherine A. Burrow
Catherine A. Burrow, CLA
Legal Assistant